

CIV-125CV (1/04)(ht-back)
CASE DESCRIPTION FORM

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

NINILCHIK CHARTERS, LLC,

Plaintiff,

vs.

CATERPILLAR, INC., a Delaware
Corporation,

Defendant.

FILED
STATE OF ALASKA
THIRD DISTRICT
04 AUG 13 PM 3:30
CLERK TRIAL COURTS
BY DEPUTY CLERK

Case No. 3AN-04-9802 CI

FIRST AMENDED COMPLAINT

Plaintiff, by and through its counsel, Davis & Davis, P.C., hereby files its complaint as follows:

1. Plaintiff is, and has been during all relevant times hereto, a duly authorized limited liability company in Alaska.

2. Plaintiff has paid all of its fees and is in compliance with state requirements so that it is authorized to maintain this action.

3. Defendant, Caterpillar, Inc. (hereinafter "Caterpillar") is a Delaware corporation, duly registered within the State of Alaska and transacting business within this jurisdiction.

4. Plaintiff is an Alaska business enterprise providing fishing and hunting charters within the State of Alaska out of Seward, Kodiak and the Kenai Peninsula.

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5. As part of its business, Plaintiff purchased a vessel, the Arctic Endeavor, which was powered by a Caterpillar 3208 TA marine engine.

6. Upon information and belief, Caterpillar is the manufacturer of the engine placed in Plaintiff's vessel.

7. Plaintiff put the Arctic Endeavor into service in June, 2002 and the engine failed in August, 2002.

8. Upon information and belief, the engine in the vessel at the time Plaintiff purchased it had just been rebuilt and overhauled.

9. Upon information and belief, Defendant was aware that the Caterpillar 3208 TA engine was being installed and used in charter vessels in Alaska which use demanded long distance daily travel to fishing and hunting grounds offshore.

10. Upon information and belief, Defendant knew that the Caterpillar 3208 TA engines had numerous failures and breakdowns while used in charter vessels in Alaska.

11. Upon information and belief, the Caterpillar 3208 TA engine installed in Plaintiff's vessel suffered from improper manufacture and/or design which Defendant knew, had reason to know or should have known about based upon their knowledge of the consistent failure ratios of the Caterpillar 3208 TA.

12. Plaintiff suffered damages as a direct and proximate cause of the failure of the Caterpillar 3208 TA motor installed

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in its vessel, including, but not limited to, out-of-pocket expenses for replacement of the engine and downtime, and loss of revenue and business reputation.

WHEREFORE, Plaintiff prays for judgment as follows:

1. Against Defendant for Plaintiff's costs, loss of profit and business which is in excess of \$50,000, the exact amount to be proven at trial;
2. For Plaintiff's costs, interest and attorney fees incurred as a result of having to file this action;
3. For such other damages as the trier of fact deems just or equitable.

Dated this 13th day of August, 2004.

DAVIS & DAVIS, P.C.

By: 

Leonard R. Anderson
Alaska Bar No. 9411092

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